

1 KATHRYN BURKETT DICKSON (SBN: 70636)

2 kathy@dicksongeesman.com

3 EMILY A. NUGENT (SBN: 255048)

4 emily@dicksongeesman.com

5 DICKSON GEESMAN LLP

6 1999 Harrison Street, Suite 2000

7 Oakland, CA 94612

8 Tel: (510) 899-4670

9 SCOTT BONAGOFISKY (SBN: 190255)

10 scott@bw-lawyers.com

11 BONAGOFISKY & WEISS

12 111 Deerwood Road, Suite 200

13 San Ramon, CA 94583

14 Tel: (925) 831-4835

15 ATTORNEYS FOR PLAINTIFFS

16 MICHAEL RUHE AND VICENTE CATALA

17 **UNITED STATES DISTRICT COURT**

18 **CENTRAL DISTRICT OF CALIFORNIA**

19 **SOUTHERN DIVISION**

20 MICHAEL RUHE, and
21 VICENTE CATALA,

22 Plaintiffs,

23 vs.

24 MASIMO CORPORATION, and DOES
25 1 to 100, inclusive,

26 Defendants.

Case No.: SACV11-734 CJC (MLGx)

**MEMORANDUM OF POINTS
AND AUTHORITIES OPPOSING
MASIMO'S *EX PARTE*
APPLICATION TO CONTINUE
HEARING ON MOTION TO
CONFIRM ARBITRATION
AWARD**

Court: Hon. Cormac J. Carney

1 **I. INTRODUCTION.**

2 Plaintiffs Michael Ruhe and Vicente Catala oppose Masimo's *ex parte*
 3 application to continue the hearing on Plaintiff's motion to confirm the final
 4 arbitration award. Masimo has failed to show good cause for the continuance,
 5 which would unnecessarily delay this prolonged proceeding even further.
 6 Granting Masimo's continuance request would also result in multiple duplicate
 7 briefs and arguments, increasing the expenditure of the court's resources as well as
 8 the time and money spent by the parties. These consequences contravene federal
 9 and state policies favoring arbitration as a more expedient and less expensive
 10 alternative to judicial proceedings.

11 The fact that one of Masimo's seven senior lawyers is unavailable for the
 12 March 3rd hearing is not good cause for a continuance under the circumstances.
 13 The lawyer whose unavailability is cited, Mr. Re, had no involvement in the two
 14 and a half years of extensive proceedings since this Court first sent this case to
 15 arbitration. He associated in on the case only yesterday, February 3rd. Any of
 16 Masimo's many other high-level attorneys of record -- from three major law firms,
 17 Knobbe Martens Olson & Bear; Atkinson Andelson, Loya, Ruud & Romo; and
 18 Paul Hastings -- is perfectly capable of handling any hearing which takes place. It
 19 is also possible, if not likely, that the motion to confirm would be decided on the
 20 papers, as such motions often are, rather than through a hearing.

22 Finally, the cases Masimo cites do not justify the relief the company seeks
 23 here. On the other hand, there are cases the company fails to cite, which support
 24 the rejection of Masimo's bid for delay.

25 **II. ARGUMENT.**

26 Masimo proposes that six briefs, rather than three, be filed on the issue of
 27 whether the Arbitrator's detailed Final Award should be confirmed or vacated.
 28

1 The continuance request contemplates three briefs on the current motion to
 2 confirm: Plaintiff's Opening Brief; Masimo's Opposition Brief; and Plaintiff's
 3 Reply Brief. The company says it intends to file a separate motion to vacate which
 4 will entail three briefs as well: Masimo's Opening Brief; Plaintiff's Opposition
 5 Brief; and Masimo's Reply Brief. All of these briefs will address the same issues
 6 -- whether the Final Award should be confirmed or vacated. This is wasteful.

7 As the court stated in *Catz American Co., Inc. v. Pearl Grange Fruit*
 8 *Exchange, Inc.* (SDNY 1968) 292 F.Supp. 549, "A separate motion . . . to vacate
 9 the arbitrators' award is not necessary. Such relief may properly be requested in
 10 the papers submitted in opposition to a motion to confirm an arbitrators' award."
 11 292 F.Supp. at 551, citing *The Hartbridge* (2d Cir.1932) 57 F.2d 672.

12 Masimo's claim of "prejudice" rings hollow. The company claims it will
 13 suffer irreparable prejudice if the Court were to grant the motion to confirm
 14 without considering its motion to vacate. As the court noted in *Catz*, no such
 15 irreparable prejudice will occur because Masimo must raise all the same arguments
 16 in its opposition to the motion to confirm.

17 Mr. Re's schedule provides even less reason to delay the motion to confirm.
 18 As noted above, he has never participated in this case prior to yesterday. The
 19 company has a legion of capable lawyers to prepare its briefs and attend a hearing -
 20 - if one is even held. The rules set out in 9 U.S.C. sections 6, 9, and 12 "further the
 21 Act's policy of expedited judicial action because they prevent a party who has lost
 22 in the arbitration process from filing a new suit in federal court and forcing
 23 relitigation of the issues." *See O.R. Securities*, 857 F.2d at 746. "Moreover, the
 24 district court need not conduct a full hearing on a motion to vacate or confirm;
 25 such motions may be decided on the papers without oral testimony." *Id.* at 746 n.3;
 26 *Legion Insurance Co. v. Insurance General Agency, Inc.* (5th Cir. 1987) 822 F.2d
 27
 28

1 541, 543; *Booth v. Hume Publishing, Inc.* (11th Cir. 1990) 902 F.2d 925, 932.

2 Furthermore, Masimo has failed to inform the Court that the arguments it
3 intends to raise in its motion to vacate (and in its opposition to the motion to
4 confirm) were briefed during the arbitration and are addressed by the Arbitrator in
5 the Final Award. Because Masimo has briefed and argued these issues previously,
6 it does not need extra time to prepare its brief to oppose the motion to confirm.

7 The prejudice here is to Plaintiffs, if the Court grants Masimo's requested
8 continuance. It has been three years since this case was filed and two and a half
9 years since it was sent to "final and binding" arbitration. The plenary arbitration
10 hearings ended almost a year ago. The Interim Award on the merits was issued in
11 October 2013, and the Final Award adding punitive damages issued on January 15,
12 2014. Masimo repeatedly attempted to delay the proceedings below, and
13 particularly the issuance of the Final Award. *See, e.g.*, Final Award, Docket No.
14 30, Exh. A at pp.2-3, 31-34, including a finding that "Arbitration was imposed on
15 [Plaintiffs] by [Masimo's] choice. Arbitration is intended to be expeditious.
16 [Masimo] has instead sought to delay and drag out the proceedings." *Id.* at p.34.
17 Continuing in the same vein before this Court, Masimo now wants the briefing and
18 hearing on the motion to confirm further extended. Enough is enough.

20 **III. CONCLUSION.**

21 For the reasons outlined, Plaintiffs urge the Court to deny Masimo's *ex*
22 *parte* request for a continuance. One set of briefs is enough.

24 DATED: February 4, 2014

DICKSON GEESMAN LLP

26 By: /s/ Kathryn Burkett Dickson

KATHRYN BURKETT DICKSON

Attorneys for Plaintiffs MICHAEL RUHE
and VICENTE CATALA